

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 27193 of 2006

DATED: 27-07-2006

Between:

B.Vijay Kumar

petitioner

And

APSRTC,

Rep by its Managing Director,

Musheerabad, Hyderabad and others

Respondents

THE HON'BLE SRI JUSTICE N.V.RAMANA

WRIT PETITION NO. 27193 of 2006

ORAL ORDER:

In the present writ petition, the petitioner questions the action of the respondents in rejecting his claim for regularization to the post of conductor or any other suitable post in terms of Circular No.P.D.15/1993 dated 18.2.1993.

In the affidavit filed in support of the writ petition, the petitioner stated that he was engaged as casual man mazdoor in the office of the Deputy Executive Engineer, APSRTC on 1.2.1988 and worked as such till 31.12.1988. It is further stated that the respondent has changed the nomenclature of the post held by petitioner and from 1.10.1988 he is engaged as contract labour and working continuously without any break. The petitioner claims that he has completed more than 609 days and he is entitled for regularization in terms of circular instructions issued in Circular No. PD-15/93 dated 18.2.1993 and made a representation dated 3.3.1993, but no action was taken thereon. A seniority list of employees who have completed 240 days was prepared by the respondent corporation on 5.3.1990, wherein the petitioner was shown at serial no.6. In the said seniority list, it is mentioned that the petitioner has completed 609 days. The grievance of the petitioner is that though he is entitled for regularization, his claim was not considered and the case of Mr.T.M.Khadeer Khan, who is junior to him, was considered and his services were regularized. Questioning the action of the respondents in not considering his claim

for absorption, the petitioner filed

W.P. No. 24678 of 2004 and the same was disposed of by order dated 23.4.2005 directing the respondents to take appropriate decision within a period of two months from the date of receipt of copy of the order. However, his case was not considered. Hence, the present writ petition.

A counter affidavit was filed on behalf of respondents 1 to 3, *inter-alia* stating that the case of Mr.T.M.K.Khan was considered inasmuch as he was working with the contractor as on 22.8.1991 the date on which the corporation entered into an agreement with the recognized union. It is specifically stated that as on 22.8.1991, the petitioner was neither engaged by the contractor nor by the corporation, as such he cannot compare his case with that of Mr.T.M.K.Khan. It is further stated that in terms of the directions of this Court in W.P. No. 24678 of 2004 dated 23.3.2005, the case of the petitioner was considered and rejected by the Chief Civil Engineer, APSRTC vide proceedings No.PA/255(1)/2005-CCE.II dated 24.5.2005.

On the one hand the petitioner claims that he was engaged directly by the respondent corporation and working continuously without any break and filed cheques dated 20.7.1988 and 21.11.1998 issued by Executive Engineer, APSRTC, Karimnagar. On the other hand, the respondents contend that there is no record to show that the petitioner was directly engaged by the corporation and completed the required man days and fulfilled the conditions contained in the circular for absorption as conductor and that he was not at all working as a Casual Employee when the circular instructions were issued vide Circular No.PD.163/89 dated 20.12.1989 and subsequent circulars relating to further guidelines including circular No.PD-15/93 dated 18.2.1993 and the claim of the petitioner was rejected by proceedings dated 24.5.2005. Whether the petitioner is directly engaged and fulfill

the required conditions for regularization is purely a question of fact, and the same cannot be gone into by this Court and the same has to be adjudicated before the concerned Labour Court. Very recently, the apex Court in **ONGC Ltd. v. Shyamlal Chandra Bhowmik**^[1], while reiterating this view, held that the High Courts should not entertain writ petitions directly when claim of more than 240 days service in a year is raised, and that the said question being a question of fact, was not to be examined by the writ petition and the proper remedy for the workman raising such claim is to raise an industrial dispute under the Industrial Disputes Act, 1947 so that evidence can be analyzed and a conclusion arrived at.

In the above view of the matter, the remedy of the petitioner is to raise an industrial dispute before the Labour Court under Section 11-A of the Industrial Disputes Act, 1947.

Accordingly the writ petition is disposed of. The petitioner is at liberty to raise industrial dispute before the Labour Court under Section 11-A of the Industrial Disputes Act, 1947. No costs.

N.V. RAMANA, J.

Date: 27.7.2006

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